Annex B

CASE SUMMARY

Complaint against the former Regional Services Department for impropriety in the service of summonses

The Complaint

The complainant complained against the former Regional Services Department [(RSD), presently known as the Food and Environmental Hygiene Department (FEHD)]. He alleged that although he had informed RSD of his new correspondence address and telephone number when he applied for transfer of his restaurant licence, RSD still sent the summonses by post to the restaurant. As a result, he did not receive the summonses and was absent from the hearings. The subsequent attempted personal service of the same summonses by a police officer at his former restaurant caused him great embarrassment.

Background Information Provided by the Complainant

2. The complainant transferred his restaurant licence to another operator in mid-1999. When he and the new operator attended RSD to apply for the transfer of licence, he provided the department with his new correspondence address and telephone number. However, when RSD later applied to a Magistrate for two summonses to be issued against the complainant for food-related offences which allegedly took place before the transfer, the change in address was not mentioned in the relevant applications. The summonses were sent by post to the restaurant which was no longer operated by the complainant. As a result, he did not receive the summonses and was absent from the hearings. The Magistrate then ordered a police officer to go to the restaurant in September 1999 to serve the summonses on the complainant personally. The new operator informed the complainant of the attempted personal service of the summonses and the complainant approached the Magistracy for clarification. Only then did he know what had happened.

3. The complainant considered that RSD had acted improperly in the service of summonses and lodged a complaint with this Office.

Observations and Opinions

4. FEHD stated that under present practice, the Judiciary was responsible for the service of summonses. In normal circumstances, summonses would first be served by post. If a defendant failed to attend court as required by the summons, the court would order personal service of the summons on the defendant by a police officer. FEHD pointed out that it had been RSD’s practice to request Magistracies to serve summonses to the restaurants concerned. In the present case, the summonses had been sent to the complainant’s former restaurant. As the defendant did not appear as summonsed, personal service was ordered by the Magistrate.

5. Investigation revealed that the complainant approached RSD in early May 1999 to apply to transfer of his restaurant licence. The application was handled by a Health Inspector (hereinafter referred to as ‘Inspector A’). During the process, the complainant asked Inspector A when he would receive the summonses for the offences he had allegedly committed in March. Inspector A replied that he would receive the summonses in about one month’s time at the earliest.

6. This Office noted that the Magistracy hearings in respect of the complainant’s offences were scheduled for July 1999. During that two months’ interval, Inspector A should have ample time to record the complainant’s new address and pass this information to the Prosecution Section. The need to inform the Prosecution Section would appear even more pertinent when the complainant had made clear to Inspector A that he had not yet received the summonses.

7. In early November 1999, RSD decided to withdraw the summonses against the complainant for having invoked irrelevant provisions in laying the charge. Shortly thereafter RSD’s Prosecution Section wrote to the complainant at his new correspondence address, informing him of the department’s decision. A copy of the letter and a relevant covering memo were sent to the Magistracy by hand. Upon the receipt of the notification, the Magistracy wrote to complainant to confirm the withdrawal of the summonses. However the correspondence from the Magistracy was still sent to the restaurant and not to his new address.

8. FEHD explained that RSD did not specifically notify the Magistracy of the defendant’s change in address because it did not know at the time the Magistracy would write to the complainant separately to inform him of the withdrawal of the cases. FEHD had since promised to discuss with the Judiciary on proper arrangements for updating defendant’s changes in personal particulars, e.g. address. RSD also acknowledged that its omission had inconvenienced the complainant and the department had since apologised to the complainant, with a promise to revamp the arrangements.

Conclusion

9. This Office was of the view that Inspector A should have taken prompt

action to notify the department's Prosecution Section of the complainant's new address so as to avoid delays in the service of summonses. In turn, the Prosecution Section should also have notified the Magistracy of the change as soon as it came to their notice. As there had been omission on the part of RSD staff that had caused inconvenience to the complainant, this Office considered this complaint was **substantiated**.

Latest Development

10. In the light of this complaint, RSD conducted a review of its procedures. It had since issued internal guidelines to require its staff to take prompt action to record changes in personal data and where outside parties, organisations or departments were involved, to inform the latter of such updated information as soon as possible.

Recommendations

11. The Ombudsman made the following recommendations to the Department for consideration:

(a) to fully implement the guidelines mentioned in paragraph 10 above; and

(b) to conduct, in carrying out its promise as stated in para. 8 above, a review in conjunction with the courts on matters regarding the co-ordination and arrangements for the service of summonses.

Response from FEHD

12. On the whole, the department, whilst admitting that inconvenience had been caused to the complainant arising out of the failure to serve the summonses to his current address, had sought to point out that Inspector A had merely followed what were then the routine procedures of the department and should not be held personally responsible for the incident and be criticised accordingly. The department further conceded that the complainant had indeed revealed his new address to Inspector A in May 1999 but that such was provided solely in connection with his application for a transfer of his restaurant licence and not, as maintained by the complainant, to facilitate the service of outstanding summonses to him. In any event, the department indicated that it had accepted The Ombudsman's recommendations on remedial measures.

Final Remarks by this Office

13. This Office wish to point out two specific issues -

(a) As regards departmental responsibility, the Department should have issued sufficient guidelines on the need to send updated information on defendants' addresses to the courts to prevent unnecessary delay in the service of summonses to them.

(b) Inspector A, in dealing with the complainant's application for the transfer of his licence, should have been aware that there were outstanding summonses against the complainant and that once the latter had transferred the license of the restaurant, these summonses should be re-directed to complainant's new address. Even in the absence of a request from the complainant or clear departmental guidelines on updating defendants' addresses for outstanding summonses, this Office believes that Inspector A should have taken the initiative to notify the departmental

Prosecution Section of the changed particulars so as to facilitate the successful service of summonses to the complainant. Had this been done, the complaint could have been avoided. For this reason, Inspector A should assume at least partial responsibility for the incident.

14. Having considered all the above factors, The Ombudsman came to the view that the conclusion of the investigation, as outlined in para. 9 above, should remain unchanged. She was nevertheless pleased to note that FEHD had accepted her recommendations and implemented measures accordingly.

Office of The Ombudsman
Case Ref. : OMB 1999/2698
August 2000